



**MICHAEL A. CARDOZO**  
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**THE CITY OF NEW YORK**  
**LAW DEPARTMENT**  
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June 13, 2013

**BY ECF**

Honorable Carol B. Amon  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Michael Caban v. City of New York, et al.  
10 CV 4619 (CBA) (LB)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department. Attached please find a duly executed Stipulation and Order of Settlement and Dismissal dated June 12, 2013, for Your Honor's endorsement and filing.

Thank you for your consideration.

Respectfully submitted,

\_\_\_\_\_  
/s/  
Virginia J. Nimick  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: Honorable Lois Bloom (by ECF)  
United States Magistrate Judge

Richard Cardinale, Esq. (by ECF)  
*Attorney for Plaintiff*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

MICHAEL CABAN,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER  
MASHIEL SANTOS, shield # 19136, POLICE  
OFFICER ANTHONY EGAN, shield # 29734,  
POLICE OFFICER EDWARD MURPHY, shield #  
2144, POLICE OFFICER CHUNGKUNG IP, shield  
# 24632,

Defendants.

-----X

**STIPULATION OF  
SETTLEMENT AND ORDER  
OF DISMISSAL**

10 CV 4619 (CBA)(LB)

**WHEREAS**, plaintiff commenced this action by filing a complaint on or about October 8, 2010 and an amended complaint on March 9, 2011 in the United District Court for the Eastern District of New York alleging that the defendants violated plaintiff's federal civil and state common law rights; and

**WHEREAS**, defendants have denied any and all liability arising out of plaintiff's allegations; and

**WHEREAS**, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

**WHEREAS**, plaintiff **MICHAEL CABAN** has authorized his counsel to settle this matter on the terms set forth below;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees in excess of the amount specified in paragraph "2" below.

2. Defendant **CITY OF NEW YORK** hereby agrees to pay plaintiff **MICHAEL CABAN** the sum of THIRTY SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$37,500.00) in full satisfaction of all claims, including claims for costs, expenses and attorneys' fees. In consideration for the payment of this sum, plaintiff agrees to dismissal of all the claims against the defendants and to release the defendants and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiff's civil rights, from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees except for: (1) claims articulated in the complaint filed in Richmond County Supreme Court, bearing Index Number: 101984-09; (2) claims articulated in the complaint filed in Bronx County Supreme Court, bearing Index Number: 21989/2012E; (3) claims articulated in the complaint filed in Bronx County Supreme Court, bearing Index Number: 22459/2012E; and (4) claims articulated in the complaint filed in Bronx County Supreme Court, bearing Index Number: 23251/2012E.

3. Plaintiff shall execute and deliver to defendant City's attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph "2" above and an Affidavit of Status of Liens. If Medicare has provided payment and/or benefits for any injury or condition that is the subject of this lawsuit, prior to tendering the requisite documents to effect this settlement, plaintiff shall have notified Medicare and shall submit with the settlement documents a Medicare final demand letter for conditional payments. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. §1395y(b) and 42 C.F.R. §§411.22 through 411.26.

4. Nothing contained herein shall be deemed to be an admission by the defendants that they in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. This stipulation and settlement shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

6. Plaintiff agrees to hold harmless the City of New York and all defendants regarding any liens or past and/or future Medicare payments, presently known or unknown in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendants reserve the right to issue a multiparty settlement check, naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

7. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York  
June 12, 2013

Richard Cardinale, Esq.  
*Attorney for Plaintiff*  
26 Court Street, Suite 1815  
Brooklyn, New York 11242

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
*Attorney for Defendants*  
100 Church Street  
New York, New York 10007

By: 

RICHARD CARDINALE

By: 

VIRGINIA J. NIMICK  
Assistant Corporation Counsel

SO ORDERED:

Dated: New York, New York  
\_\_\_\_\_, 2013

HONORABLE CAROL B. AMON  
UNITED STATES DISTRICT JUDGE